IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1978 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

1 to 5 NO

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MINOR KAILASH MANGILAL - Appellant(s)

Versus

RAFIQUEBHAI MANSURI & 1 - Defendant(s)

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Appearance :
MR CH VORA for Appellant(s) : 1,
RULE SERVED BY DS for Defendant(s) : 1,
MR DAKSHESH MEHTA for Defendant(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 12/01/2006

ORAL JUDGMENT

1. This appeal under section 173 of the Motor Vehicles Act, 1988 (“the MV Act” for short) is preferred from the order dated 24.12.2004 of the

learned City Civil Judge, Ahmedabad, below the application at Ex.30 in Motor Accident Claim Petition No.640 of 1998. Admittedly, the application at Exh.30 was filed by the appellant under section 140 of the MV Act with a prayer to award Rs.25,000/- by way of compensation on the basis of permanent disability to the extent of 20% of the whole body caused to the ward in whose name the application is filed. That application in the pending petition under section 166 of the MV Act was rejected by the impugned order mainly on the ground that, "....*prima facie, there was no permanent disability....",* and that conclusion was reached on the basis that the applicant had not produced certified copies of relevant documents like medical certificate, disability certificate etc. Moreover, copies of the documents produced by the applicant were not legible.

2. It was submitted that, if the applicant had the opportunity, he could have produced necessary documentary evidence and proved his case for compensation under section 140 of the MV Act. Instead of granting such opportunity, the Court had apparently disposed the application with an order to raise the issues in the main petition on the same day and to keep the matter for recording of evidence of the applicant on 5.1.2005. Thus, the Tribunal took care to have the main petition claiming compensation on the basis of fault of the respondents expedited

but, in the process, disposed the application under section 140 of the MV Act on the basis of *prima facie* conclusions reached without recording of evidence and without the applicant getting sufficient opportunity to establish his case.

3. It is clear from bare reading of the provisions of section 141 of the MV Act that the application under section 140 has to be disposed of as expeditiously as possible and such claim has to be disposed of in the first place. It, however, does not mean that adjudication of the claim under section 140 of the MV Act has to be truncated and the claim can be disposed summarily without deciding the issues arising in the matter. The right of compensation under section 140 of the MV Act is an independent right and, in cases, it may be more important and a better source for compensation.

4. In the above facts and circumstances, since the impugned order appears to be based on *prima facie* reading of the material placed before the learned Tribunal and since substantive right of the applicant to claim compensation under section 140 of the MV Act has come to be defeated without proper adjudication, the appeal is partly allowed and the impugned order dated 24.12.2004 is set aside with a direction to adjudicate the application at Ex.30 in MACP No.640 of 1998 afresh after giving to the parties sufficient

opportunity of being heard and leading evidence in accordance with law. It is needless to clarify that the Court may adopt the summary procedure prescribed by Rule 231 of the Gujarat Motor Vehicles Rules, 1989.

Sd/-

(D.H.WAGHELA, J.)

(KMG Thilake)